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837347—55

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 618

W. F. EDWARDS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

L. C. EDWARDS, JR., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals (R. 97; Pet. 21) is reported at 217 F. 2d 952. The findings of fact and opinion of the Tax Court (R. 66–71) are reported at 20 T. C. 615.

JURISDICTION

The judgment of the Court of Appeals was entered on January 18, 1955 (R. 98). The peti-

tion for a writ of certiorari was filed on February 25, 1955. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether, upon the sale of an orange grove with immature fruit on the trees, such part of the gain attributable to the crop itself was taxable as ordinary income, prior to the 1951 amendments to Section 117 (j) of the Internal Revenue Code.

STATUTES INVOLVED

The statutory provisions involved are Section 117 (a) (1) and (j) (1) of the Internal Revenue Code of 1939 and Section 323 (a), (b) and (c) of the Revenue Act of 1951, which are set forth in the Appendix, *infra,* pp. 8–10.

STATEMENT

Taxpayers, W. F. Edwards and L. C. Edwards, Jr., are brothers who were engaged in the citrus farming business in Florida during 1945. They commenced proceedings in the Tax Court to determine the correctness of claimed deficiencies in income taxes for 1945, based on profits resulting from the sale of two jointly owned citrus groves at a time when the trees were bearing a crop of immature fruit (R. 5–12, 14–21). The Tax Court

held against taxpayers (R. 66X69, 71–72),[1] and the Court of Appeals for the Fifth Circuit affirmed, *per curiam* (R. 97; Pet. 21).

The facts pertinent to taxpayers' petition may be summarized as follows:

Taxpayers owned undivided one-half interests in two citrus groves known as Fechtig Grove and Thonotosassa Grove. They sold Fechtig to the Triple E Development Company on September 24, 1945, for a lump sum of $322,500, and similarly sold Thonotosassa for $200,000 on October 15, 1945, each receiving one-half of these amounts for their respective undivided interests. Since at the time of the sales the growing fruit on the trees was immature, it was not then susceptible of being harvested. (R. 67.)

Each of the two citrus groves had been held more than six months, and neither taxpayer reserved any right in or any part of the properties sold. Each taxpayer was engaged in the business of citrus farming and these groves were used by them in this business. Each taxpayer produced and normally sold mature citrus fruit only. (R. 68.)

The record includes testimony from one of the taxpayers that citrus fruit on the tree before it

[1] In the Tax Court, taxpayers' causes were consolidated with those of two trusts for which L. C. Edwards, Jr., was trustee (see R. 2, 66–67). Matters respecting the deficiencies asserted against the trusts are not in issue on taxpayers' petition for certiorari.

matures has some sale value, predicated on an agreement by the owner of the grove that it could remain on the tree until maturity (R. 32). There was also testimony that the fruit could not be severed from the trees before maturity and still retain any commercial value (R. 33).

In their 1945 income tax return, each taxpayer treated his entire profit on the sale of the two citrus groves as capital gain, and did not treat any portion as taxable as ordinary income (R. 11–12, 20–21). However, they took as deductions against ordinary income all expenses of cultivation and fertilization of the crops and other operating expenses concerning the groves sold, which had been incurred prior to the date of sale (R. 68). They conceded that in selling a grove some value attaches to the growing crop (R. 27), and stipulated that the portion of the gain from these sales attributable to the unmatured crop would be $129,415.29 for each of them, if allocation were required (R. 46).

The Commissioner determined that the citrus crops on the trees in the respective groves at the time the groves were sold were being held by taxpayers primarily for sale to customers in the ordinary course of their trade or business, and further that, upon sale of the groves, the gain attributable to the immature fruit on the trees was taxable as ordinary income (R. 9–12, 18–21). The Tax Court sustained the Commissioner (R. 69), and the Court of Appeals affirmed (R. 97).

Both courts held that this Court's recent decision in *Watson* v. *Commissioner,* 345 U. S. 544, was controlling.

ARGUMENT

The decision below is clearly correct, no previously undetermined issue or matter of importance is presented, and there is no occasion for further review.

As recognized by both the Tax Court and the Court of Appeals (R. 69, 97), this case is squarely governed by *Watson* v. *Commissioner,* 345 U. S. 544, rehearing denied, 345 U. S. 1003, where the pertinent facts are in all material respects identical with those here.[2] Taxpayers' petition is nothing more than an attempt to have this Court reconsider its *Watson* decision.

Contrary to taxpayers' contention (Pet. 2), the facts here are indistinguishable from those in the *Watson* case. In both cases, taxpayers, who were engaged in the business of growing and selling citrus fruit, had sold certain citrus groves in which immature fruit was on the trees at the time of the sales. In both cases, the sales were made for an over-all lump sum without allocating any specific portion of the purchase price to the growing crop. Each taxpayer treated his entire gain

[2] Taxpayers here participated in the *Watson* case by filing an *amicus curiae* brief on the merits. See *amicus curiae* brief in *Watson* v. *Commissioner*, No. 290, October Term, 1952, filed in the interest of L. C. Edwards, Jr., and others.

from these sales as long term capital gain, but deducted against ordinary income all expenses of cultivation incurred prior to the date of sale. Both cases involved sales which took place in either 1944 or 1945, during which years the controlling language of Section 117 (j) of the Code remained unchanged. Thus, the two cases are on all fours, and this Court's decision in *Watson* is necessarily controlling.

Taxpayers' claim that this Court departed in *Watson* from established principles of statutory interpretation (Pet. 15–17) is wholly lacking in substance, as are their remaining contentions that the Court in that case gave inadequate consideration to the 1951 amendments to Section 117 (j)[3] (Pet. 8–15) and to the "horticultural actualities of citrus production" (Pet. 17–19). The Court's opinion discussed the 1951 amendments in considerable detail, 345 U. S. at 547–549, and specifically noted that the immature crop "was not severable" at the time of sale (*id.*, at 551). There is no occasion for this Court to give further consideration to these matters.

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[3] The 1951 amendments are found in Section 323 of the Revenue Act of 1951, c. 521, 65 Stat. 452, and are set forth in the Appendix, *infra*, pp. 9–10. These amendments significantly changed the prior law in several respects, as was recognized in the *Watson* opinion, 345 U. S. at 548.

CONCLUSION

The decision below is clearly correct, no questions of importance are presented, and there is no occasion for reconsidering *Watson* v. *Commissioner*. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1955.

APPENDIX

Internal Revenue Code of 1939:

SEC. 117. CAPITAL GAINS AND LOSSES.

(a) *Definitions.*—As used in this chapter—

(1) [as amended by Sec. 151 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Capital Assets.*—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (l), or real property used in the trade or business of the taxpayer; * * *

* * * * *

(j) [as added by Sec. 151 (b) of the Revenue Act of 1942, *supra*] *Gains and Losses From Involuntary Conversion and From the Sale or Exchange of Certain Property Used in the Trade or Business.*—

(1) *Definition of Property Used in the Trade or Business.*—For the purposes of this subsection, the term "property used in the trade or business" means property

used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (l), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.
* * *

* * * * *

[26 U. S. C. 1946 ed., Sec. 117.]

Revenue Act of 1951, c. 521, 65 Stat. 452:

SEC. 323. SALE OF LAND WITH UNHARVESTED CROP.

(a) *Treatment of Gain or Loss.*—Section 117 (j) (relating to sale or exchange of property used in the trade or business) is hereby amended—

(1) By inserting immediately before the period at the end of the second sentence of paragraph (1) thereof the following: "and unharvested crops to which paragraph (3) is applicable"; and

(2) By adding at the end thereof a new paragraph to read as follows:

(3) *Sale of Land with Unharvested Crop.*—In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted as described in paragraph (2)) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(b) *Treatment of Deductions.—*

(1) *Amendment of Section 24.*—Section 24 (relating to items not deductible) is hereby amended by adding at the end thereof a new subsection to read as follows:

(f) *Sale of Land With Unharvested Crop.*—Where an unharvested crop sold by the taxpayer is considered under the provisions of section 117 (j) (3) as "property used in the trade or business", in computing net income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed.

(2) *Amendment of Section 113 (b) (1).*—Section 113 (b) (1) (relating to adjustments to basis) is hereby amended by adding at the end thereof a new subparagraph to read as follows:

(L) for deductions to the extent disallowed under section 24 (f), notwithstanding the provisions of any other subparagraph of this paragraph.

(c) *Effective Date.*—The amendment made by subsection (a) shall be applicable only with respect to sales, exchanges, and conversions, occurring in taxable years beginning after December 31, 1950. The amendments made by subsection (b) shall be applicable to any taxable year for which a deduction is disallowed by reason of sales, exchanges, or conversions to which subsection (a) is applicable.

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